Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

76-353

NO. 76-1069

JEROME DAVID JONES, Petitioner

Against

THE UNITED STATES OF AMERICA, Respondent

PETITION FOR A WRIT OF CERTIORARI

To the Court of Appeals of the Fourth Circuit

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PETITION FOR A WRIT OF CERTIORARI

To the Court of Appeals of the Fourth Circuit

The Petitioner, JEROME DAVID JONES, prays that a Writ of Certiorari be issued to review the judgment of the Court of Appeals for the Fourth Circuit of August 9, 1976.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit, dated and entered August 9, 1976 is appended hereto and identified as Appendix "A".

JURISDICTION

The Supreme Court has jurisdiction to review decisions of the Court of Appeals by granting Writ of Certiorari. 28 U.S.C. 1254(1) and Rule 19.1(b), Revised Rules of the Supreme Court of the United States of America.

QUESTION PRESENTED

CAN A PERSON BE PROSECUTED UNDER 18 U.S.C. 2312 AND 2314 FOR INTERSTATE TRANSPORTATION OF MOTOR VEHICLES (2312) AND OTHER PERSONAL PROPERTY (2314) KNOWING THE SAME TO HAVE BEEN STOLEN WHERE HE IS THE OWNER THEREOF, SUBJECT ONLY TO A SECURITY LIEN, AND DISPOSES OF SAME ACROSS A STATE LINE WHILE IT IS UNDER LIEN?

STATUTES INVOLVED

18 U.S.C. 2312 TRANSPORTATION OF STOLEN VEHICLES.

Whoever transports in interstate or foreign commerce a motor vehicle or aircraft, knowing

the same to have been stolen, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

18 U.S.C. 2314 TRANSPORTATION OF STOLEN GOODS, SECURITIES, MONEYS, FRAUDULENT STATE TAX STAMPS, OR ARTICLES USED IN COUNTERFEITING.

Whoever transports in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of $5,000 or more, knowing the same to have been stolen, converted or taken by fraud; or

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transports or causes to be transported, or induces any person to travel in, or to be transported in interstate commerce in the execution or concealment of a scheme or artifice to defraud that person of money or property

having a value of $5,000 or more; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered, or counterfeited; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any traveler's check bearing a forged countersignature; or,

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce, any tool, implement, or thing used or fitted to be used in falsely making, forging, altering, or counterfeiting any security or tax stamps, or any part thereof--

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

This section shall not apply to any falsely

made, forged, altered, counterfeited or spurious representation of an obligation or other security of the United States, or of an obligation, bond, certificate, security, treasury note, bill, promise to pay or bank note issued by any foreign government or by a bank or corporation of any foreign country.

STATEMENT OF THE CASE

Statement of Proceedings: The Defendant was indicted in the United States District Court for the Middle District of North Carolina, Greensboro, Division, with interstate transportation of a stolen motor vehicle knowing same to have been stolen in violation of 18 U.S.C. 2312; and interstate transportation of a stolen Back-Hoe Loader of a value of Eight Thousand, Eight Hundred and no/100 ($8,800.00) Dollars, knowing the same to have been stolen, converted, or taken by fraud in violation of 18 U.S.C. 2314. The Defendant was

tried before a jury, found guilty and from the verdict, sentence and denial of a motion for Judgment N.O.V. or in the alternative a new trial, the Defendant appealed.

Statement of Facts: The Defendant, on or about September 18, 1974, entered into a contract (Government Exhibit #1) with M & J Financial Corporation (written in lease terminology) whereby Defendant acquired one (1) 1973 GMC Astro Tractor by paying an initial payment of Two Thousand, Two Hundred, Fifty-two and 64/100 ($2,252.64) Dollars referred to as advance rental payments being payments 34, 35 and 36. At the end of the contract, the Tractor would be the property of Defendant without any residual payment. The Defendant was to pay all expenses, fees and charges including all taxes and keep the tractor insured with loss payable to M & J (Page 1 of Government Exhibit #1, items 8 and 9). The Defendant assumed all risk, agreed to hold M & J

harmless as to any and all claims. (Item 11 and 12 of lease, Government Exhibit #1). If Defendant surrendered possession to M & J, M & J would resell the Tractor with Defendant responsible for any defiency and receive refund of any excess of the resale proceeds after satisfying M & J for balance due (Item 15 of lease, Government Exhibit #1). If Defendant defaulted, he was responsible for any defiency (item 16 of lease). The Defendant was current with his payments when M & J was contacted by the FBI. The Tractor would have been worth Five Thousand and no/100 ($5,000.00) Dollars to Seven Thousand and no/100 ($7,000.00) Dollars at the end of the contract period an at the time of the trial had been paid, the lease marked "Satisfied" (Page 1 of Government Exhibit #1) and conveyed to Defendant.

The contract between Defendant and M & J as to the Back-Hoe Loader dated November 1, 1974

was essentially the same as the one on the Tractor. It required an initial payment of Six Hundred Thirty-three and 88/100 ($633.88) Dollars and the contract, as amended, provided at the expiration of the lease the property would be Defendant's without any residual payment, and would have a value of Three Thousand and no/100 ($3,000.00) Dollars to Four Thousand and no/100 ($4,000.00) Dollars or more at the expiration of the contract. At the time of the trial, Defendant had paid M & J, the contract marked "Satisfied" and the Back-Hoe Loader conveyed to Defendant (Government Exhibit #2.)
M & J had other contracts with Defendant called "conditional sales"; however, a conditional sales contract required a twenty (20) to twenty-five (25) per cent cash payment and a lease contract about ten (10) per cent down, otherwise, the two contracts were about the same and under North Carolina Uniform Commercial Code, were the same (the contracts required they be con-

strued under North Carolina law).

Defendant sold both items to Jake Elms in Greensboro, North Carolina, was indicted in this case as above, stated, and before trial paid M & J therefor.

The United States District Court for the Middle District of North Carolina, Greensboro Division had jurisdiction in the first instance because it was alleged that Petitioner violated a Federal Statute within the jurisdiction of that Court.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

The U. S. Court of Appeals for the Fourth Circuit has decided an important question of Federal Law which has not been, but should be, settled by this Court.

This Court in United States v. Turley, 352

U. S. 407 (1957) defined "stolen" within the meaning of the Dyer Act to include "all felonies, takings of motor vehicles with intent to deprive the owner of the rights and benefits of ownership, regardless of whether or not the theft constitutes common-law larceny."

The United States Court of Appeals for the Fourth Circuit has held in the instant case, following its decision in United States v. Bunch, 399 F. Sipp. 1156 (D.Md. 1975) 4th Cir., ___ F.2d ___ (April 13, 1976), that a security interest is tantamount to ownership and constitutes "stolen property" under the Dyer Act when its interstate transportation defeats a security interest.

It is submitted that the Congress never intended for the Dyer Act to have such broad application; that to hold a security interest is tantamount to ownership has the potential of

creating havoc in financial circles if auto finance companies are held to have an interest tantamount to ownership of the vehicles they finance; that this is an important question of Federal Law which should be settled by this Court as to whether a security interest in property owned by the accused is "stolen property" within the meaning of the Dyer Act.

The Defendant was and is guilty of disposing of property under lien in violation of S.C. Statutes and could have been prosecuted thereunder. If the position of the Government is sustained in this case, then hereafter, if property under lien is disposed of across a state line it will constitute a Federal offense under the Dyer Act instead of a violation of a state statute.

It is submitted that such a broad interpretation of the Dyer Act is not necessary because

the accused is well known to the lending institution and his prosecution would not be hampered. therefore the reasoning in the Turley Case is inappropriate where this Court said in discussing the legislature history of the Dyer Act "It (the Committee report) asserted that state laws were inadequate to cope with the problem because the offenders evaded state officers by transporting the automobiles across state lines were associates received and sold them." United States v. Turley 352, U.S. 407, 1L.ed. 2d 430, 77 S.Ct.397, 56 ALR 2d,1300 1307 (1957).

It is submitted this is a case of first impression where the owner himself, subject only to a security interest, was prosecuted under the Dyer Act. In the Bunch Case, relied on by the Fourth Circuit Court of Appeals, Bunch, at the request of the owner, transported the auto across a state line and sold parts of it; the owner collected theft insurance; but the owner was

never prosecuted for any crime.

The Circuit Court's Opinion states "he made admissions to Federal Agents which clearly reveal that by this scheme he intended to deprive M & J of any interest they might have in the equipment." In his written statements to FBI Agents, the Petitioner admitted he knew he was doing wrong and that he had no right to sell the property. I submit this to be true in any instance where a person sells and conveys property under lien, and that such actions could at all times be construed as a scheme intended to deprive the secured party of its interest when property is sold and disbursed of without paying off the security lien. It is exactly this conduct that the State Statutes are designed to prevent and which makes it a violation of law to sell property under lien without first paying off the lien.

Petitioner, therefore, for the above and foregoing reasons, Petitions this Honorable Court to grant this Petition for a Writ of Certiorari, and, after doing so, hold and conclude that the subject property is not "stolen"; that the Petitioner is not guilty; the judgment below reversed and the sentence vacated.

CONCLUSION

For the reasons stated herein, Certiorari should be granted in this cause. Judgment and opinion of the United States Court of Appeals for the Fourt Circuit should be reversed, a judgment of acquittal directed and the sentence vacated.

Respectfully submitted,

MELVIN L. ROBERTS
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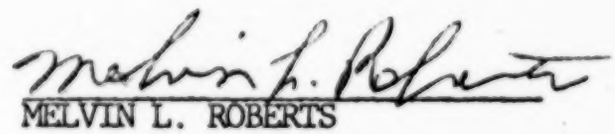
York, South Carolina 29745
AC 803/684-4807

CERTIFICATE OF PROOF OF SERVICE

I, MELVIN L. ROBERTS, Attorney for Petitioner, JEROME DAVID JONES, hereby certify that a copy of the foregoing Petition for a Writ of Certiorari has been deposited in the United States Mail, First Class, postage prepaid, properly addressed to Respondent's Counsel, THE SOLICITOR GENERAL, United States Department of Justice, Washington, D.C. 20530, on this, the 3rd day of September, 1976.



MELVIN L. ROBERTS

APPENDIX "A"

IN THE

UNITED STATES COURT OF APPEALS

For The Fourth Circuit

No. 76-1069

United States of America,

Appellee,

versus

Jerome David Jones,

Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Eugene A. Gordon, District Judge.

Argued May 7, 1976 Decided August 9, 1976

Before HAYNSWORTH, Chief Judge, BRYAN, Senior Circuit Judge, and BUTZNER, Circuit Judge

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Melvin L. Roberts (W. Warren Sparrow on brief) for Appellant; Russell A. Eliason, Assistant United States Attorney (N. Carlton Tilley, Jr., United States Attorney and V. Edward Jennings, Jr., Assistant United States Attorney on brief) for Appellee.

PER CURIAM:

The defendant was convicted of transporting a stolen vehicle across a state line in violation of 18 U.S.C. 2312 and of transporting stolen goods across a state line in violation of 18 U.S.C. 2314. The evidence disclosed that Jones entered into two "lease" agreements with M & J Financial Corporation for a tractor and a backhoe loader. After receiving possession of the tractor and loader, he took them from South Carolina into North Carolina and sold them to a third person. He subsequently made admissions to federal agents which clearly reveal that by this scheme he intended to deprive M & J of any interest it might have in the equipment.

On Appeal, Jones contends that a vehicle and goods which have been taken with the intent to deprive a secured party of its security interest are not "stolen" within the meaning of 18 U.S.C. 2312 and 2314. Jones characterizes his agreement

with M & J as a secured transaction and not a lease. He contends that M & J had no right to possess the tractor and loader and argues, therefore, that the tractor and loader could not be the subject of theft by him.

Even if Jones' characterization of the agreement is proper, he states no ground which would lead to a reversal of his convictions. Indeed, we recently dealt with this issue in United States v. Bunch 4th Cir., ___ F.2d___ (April 13, 1976) where we held that a car, taken with the intent to deprive a creditor of a security interest, can be said to be "stolen" within the meaning of the Dyer Act.

We affirm the judgment of the district court.

AFFIRMED.

Supreme Court, U. S.
FILED
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OCTOBER TERM, 1976

JEROME DAVID JONES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on August 9, 1976. The petition for a writ of certiorari was filed on September 7, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether petitioner's conduct constituted the transportation of "stolen" property, in violation of 18 U.S.C. 2312 and 2314.

STATUTES INVOLVED

18 U.S.C. 2312 provides:

> Whoever transports in interstate or foreign commerce a motor vehicle or aircraft, knowing the same to have been stolen, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

18 U.S.C. 2314 provides in pertinent part:

> Whoever transports in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of $5,000 or more, knowing the same to have been stolen, converted or taken by fraud; * * *
>
> * * * * *
>
> Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

STATEMENT

After a jury trial in the United States District Court for the Middle District of North Carolina, petitioner was convicted on one count charging interstate transportation of a stolen motor vehicle and one count charging interstate transportation of stolen property in violation of 18 U.S.C. 2312 and 2314. He was sentenced to consecutive three and four year terms of imprisonment. The court of appeals affirmed *per curiam* (Pet. App. A).

The government's evidence showed that on September 18, 1974, petitioner entered a lease-purchase agreement for a 1973 GMC Astro tractor with the M & J Financial Corporation in Shelby, North Carolina (Tr. 50; Exh. 1). On November 1, 1974, petitioner entered a lease-purchase agreement with M & J Financial Corporation for a tractor and loader backhoe (Tr. 39; Exh. 2). The agreements

provided that petitioner would lease the tractor and backhoe for 36 months at a prescribed monthly rate. During that period, the lessor retained title and complete ownership of the property as well as the right to repossess and sell the equipment upon default by petitioner. Title to the tractor and backhoe were to pass to petitioner upon completion of the rental payments (Tr. 44, 63, 68-69).

In October 1974, while this relation with M & J Financial Corporation existed, petitioner offered to sell the backhoe to John Elms, Jr., the president and principal owner of Apex Equipment Company, Inc., in Greensboro, North Carolina. Petitioner told Elms that he had obtained the backhoe from a customer in exchange for services. On October 25, 1974, petitioner delivered the backhoe to Elms, in exchange for a truck tractor and $5,500 in cash (Tr. 187-189).[1]

Petitioner subsequently offered to sell the Astro tractor to Elms (Tr. 192-193). Elms inspected the vehicle at petitioner's place of business in York, South Carolina on October 30 (Tr. 193-194). The following day Elms agreed to buy the Astro tractor in exchange for two dump trucks and $9,000 (Tr. 195). Petitioner delivered the Astro tractor to Elms in Greensboro later that day (Tr. 195). Petitioner later gave Elms a fraudulently obtained title for the vehicle (Tr. 147-148, 198-199). At the time of the sales it was Elms' understanding that petitioner owned the backhoe and the tractor (Tr. 199).

Petitioner made two or three payments to M & J Financial Corporation under the lease-purchase agreements

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[1] Petitioner apparently obtained possession of the backhoe prior to formalizing the lease-purchase agreement with M & J Financial Corporation.

(Tr. 45, 53, 66-67).[2] Thereafter he defaulted, making no further monthly payments (Tr. 66). M & J was unable to find or repossess the equipment, in which it had invested about $28,000 (Tr. 66). Approximately two weeks prior to trial, M & J accepted $12,000 from petitioner in satisfaction of the agreements (Tr. 65-66).

ARGUMENT

Petitioner contends that although title was in the name of M & J, the tractor and backhoe were not "stolen," within the meaning of 18 U.S.C. 2312 and 2314, when his transactions with Elms occurred. He does not deny that the resale deprived M & J of its security interests; rather, by characterizing himself as the "owner" under the lease-sale agreements, petitioner seeks to avoid the terms of Sections 2312 and 2314.

In *United States* v. *Turley*, 352 U.S. 407, 417, this Court determined that the word "stolen", as used in 18 U.S.C. 2312, is not limited to the definition of common law larceny but includes "all felonious takings of motor vehicles with intent to deprive the owner of the rights and benefits of ownership."[3] Under the lease-purchase agreements petitioner was barred from assigning any rights he had in the equipment without the consent of the lessor, who

[2]The evidence showed that petitioner was current in his payments until December 1974 (Tr. 66-67). When entering the lease, petitioner prepaid the last three payments for the tractor and the last two payments for the backhoe (Tr. 45, 50; Exhs. 1, 2). Whether petitioner intended at the outset to dispose of the equipment is irrelevant, for the statutes may be violated regardless of when the unlawful intent comes into existence. *Hand* v. *United States*, 227 F. 2d 794, 796 (C.A. 10); *Collier* v. *United States*, 190 F. 2d 473, 477 (C.A. 6).

[3]Petitioner does not contest that the term "stolen" should be construed uniformly for purposes of Section 2314 and Section 2312. See *Lyda* v. *United States*, 279 F. 2d 461, 464 (C.A. 5).

retained title and the right to repossess upon default. In selling the tractor and backhoe, petitioner in fact deprived the M & J Financial Corporation of the "rights and benefits of ownership" under the lease-purchase agreements and thereby violated both Sections 2312 and 2314.

Petitioner urges, however, that Sections 2312 and 2314 do not apply when conditional sales agreements are breached. While we do not suggest that default alone under a conditional sales agreement would constitute a violation of the statutes (see *Lake* v. *United States*, 338 F. 2d 787, 789 (C.A. 10)), the surreptitious sale of goods held under such an agreement is an entirely different matter, since it deprives the conditional seller of substantial ownership interests. In light of this Court's construction of the term "stolen" in *Turley*, the deprivation here is sufficient to invoke the provisions of Sections 2312 and 2314, for "the statute[s] may be satisfied with something less than permanency and something less than a deprival of the totality of ownership." *Schwab* v. *United States*, 327 F. 2d 11, 13 (C.A. 8); *United States* v. *Bunch*, 542 F. 2d 629 (C.A. 4) (vehicle possessed under conditional sales agreement held stolen under Section 2312);[4] *United States* v. *Pittman*, 441 F. 2d 1098 (C.A. 9) (vehicle possessed under security agreement held stolen under Section 2312); *Lake* v. *United States*, 338 F. 2d 787 (C.A.

[4]The issue here was decided adversely to petitioner in the *per curiam* opinion of the court of appeals in *Bunch, supra*, upon which the court below relied (Pet. App. A). A thorough analysis of the question appears in the opinion of the district court in *Bunch* (399 F. Supp. 1156 (D. Md.)). Petitioner urges (Pet. 12-13) that *Bunch* is inapposite because the defendant there transported the vehicle at the request of the person holding it under a conditional sales agreement. The distinction is irrelevant; the issue was not the identity of the party who transported the vehicle, but whether that act deprived the conditional seller of a sufficient interest under the statute.

10) (vehicle possessed under unfulfilled promise to assume payments on chattel mortgage held stolen under Section 2312); *Smith* v. *United States*, 233 F. 2d 744 (C.A. 9) (vehicle possessed under conditional sales contract held stolen under Section 2312).[5] Whether or not the resale of the M & J equipment held under a conditional sales agreement involved the deprivation of a total ownership interest, the deprivation was sufficient to constitute a violation of Sections 2312 and 2314.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

RICHARD L. THORNBURGH,
Assistant Attorney General.

JEROME M. FEIT,
JAMES A. HUNOLT,
Attorneys.

DECEMBER 1976.

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[5]In *Turley*, *supra*, this Court relied upon *Smith* v. *United States*, *supra*, as an example of means by which vehicles may be deemed "stolen" under Section 2312. See 352 U.S. at 416 n. 16.